

Workplace Safety And Insurance Appeals

Tribunal Rolls Out New Pre-Hearing Process



On May 6, 2024, the Ontario Workplace Safety and Insurance Appeals Tribunal ("WSIAT") rolled out a new pre-hearing process that impacts both appellants and respondents. The new process aims to improve the Tribunal's timelines to meet organizational goals, to make its materials and processes as clear and easy to understand as possible, and to address other issues and concerns with respect to the current processes.

Key changes in the new pre-hearing process include the roll out of new forms and Practice Directions, elimination of the 2-year notice period to continue with an appeal, a revised process for consenting to the disclosure of material, and a defined disclosure period which will eliminate the current "3 week rule".

As part of the new forms, the Notice of Appeal has been revised to be more comprehensive. Those starting an appeal at the Tribunal will need to confirm their hearing format preference and any language and accommodation issues. Once the Notice of Appeal has been filed, the Tribunal will request the worker's consent to disclose the Case Record material to the employer if they are participating.

A new step in the pre-hearing process involves the Tribunal issuing a letter setting out the issues in dispute ("Issues Letter"), and Hearing Ready and Hearing Not Ready forms to the appellant. The appellant then has 4 weeks to complete one of the forms advising the Tribunal that they are either ready to proceed with their appeal, or that they are not ready to proceed. If the appellant is not ready to proceed, they will need to provide reasons why they are not ready, and outline how long they need to prepare. If the appellant is not ready to proceed, the appeal will be placed into "inactive" status.

When the appellant is ready to proceed, they will need to complete a Hearing Ready Form. The new form will be part of the disclosure process and will require the appellant to confirm the issues in dispute while also providing an outline of their appeal, including the identification of relevant policies, legal precedents and documents contained within the Case Record that they intend to rely on to support their appeal. The appellant will also have an opportunity to provide written submissions to supplement their oral submissions at a hearing or identify written submissions already contained in the Case Record. In the case of a worker appeal, this information will be shared with the respondent, if any. The responding party will have an additional period of time to respond to submissions made by the worker.

The WSIAT has indicated that this will mark the end of the “disclosure period” at which time all new evidence will need to have been submitted.

Once the “disclosure period” has ended, the Tribunal will then send a Hearing Ready Letter to the parties and a hearing will be scheduled. Any evidence submitted after the “disclosure period” will need to be reviewed as a preliminary matter at a hearing.

The Tribunal has indicated that any new appeals after May 6, 2024 will follow the new pre-hearing process. The Tribunal will also transition any active cases to the new process over the next several months.

Anyone managing claims at the Tribunal should be mindful of the new process as it will require earlier preparation and disclosure of the evidence on which employers intend to rely at a hearing as part of the pre-hearing process. The new Practice Directions confirming the Tribunal’s new processes are all available on the WSIAT website at www.wsiat.on.ca.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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